

REMARKS

Claims 1-7 and 22 have been canceled.

Claims 8, 12, 16 and 23 have been amended.

35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added).

Claims 8-15

Amended claim 8 claims “[a] method for making an opening in a vessel, comprising: piercing the wall of the vessel with a piercing element; retracting said piercing element at least partially into a tube having a lumen; and moving said piercing element away from the longitudinal centerline of said tube, after said retracting.”

In contrast, U.S. Pat. No. 6,699,256 to Logan et. al. (“Logan”) does not expressly or inherently describe “moving said piercing element away from the longitudinal centerline of said tube, after said retracting.” The claimed piercing element is a structure that is “forcibly advanced to puncture the target vessel wall.” (paragraph 0048 of published application, 2004/0098011). The Office Action identifies both the stylet 322 and the distal end portion of a catheter 522 as analogous to the claimed “piercing element.” (Office Action, page 2). The distal end portion of the catheter 522 of Logan has “an atraumatic bulb tip 524, which will not damage the interior wall of the vessel.” (Logan; col. 13, lines 50-52). As a result, the distal end of the catheter 522 does not and cannot puncture the target vessel wall, because it is specifically configured to prevent such puncture. Thus, the distal end of the catheter 522 is not analogous to the claimed piercing element.

Turning to the stylet 322 of Logan, it is movable linearly along the longitudinal centerline of a tube. (Logan; *e.g.*, Figures 21-23). After the stylet 322 punctures the wall of the vessel, it is simply retracted “proximally” into a tubular coring tip 324. (Logan; col. 13, lines 22-30; Figure 23). Nowhere does Logan describe motion of the stylet 322 “away from the longitudinal centerline of [a] tube,” either before or after the stylet 322 is retracted. Thus, Logan does not and cannot describe the claimed “moving said piercing element away from the longitudinal centerline of said tube, after said retracting.”

Further, even if the distal end of the catheter 522 were considered to be the claimed piercing element, which it is not, the distal end of the catheter 522 moves toward, not away from, the longitudinal centerline of the tubular coring tip 324 after retracting begins. Thus, Logan does not describe the claimed “moving said piercing element away from the longitudinal centerline of said tube, after said retracting.”

As a result, Logan does not expressly or inherently describe each and every element of claim 8, and claim 8 is believed to be in condition for allowance. Claims 9-15 depend from claim 8, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

With regard to dependent claim 11, Logan nowhere describes the claimed “separating said piercing element from said tube,” and the Office Action does not contend that Logan does so.

With regard to dependent claim 12, Logan nowhere describes the claimed “pivoting said piercing element,” and the Office Action does not contend that Logan does so.

With regard to dependent claim 13, Logan nowhere describes the claimed “storing said piercing element adjacent to said tube,” and the Office Action does not contend that Logan does so.

Claims 16-21, 23

Claim 16 claims “[a] method for making an opening in the wall of a hollow tissue structure, comprising: piercing the wall of the hollow tissue structure, at a location in the wall through which

fluid previously had been substantially prevented from escaping, with a piercing element to create an opening therethrough; retracting the piercing element toward an opening in a body to cut a tissue plug from the wall of the hollow tissue structure; capturing the tissue plug with said piercing element; and moving said piercing element away from the longitudinal centerline of said body after said capturing.”

The discussion above with regard to claim 8 applies equally here. Nowhere does Logan describe the claimed “moving said piercing element away from the longitudinal centerline of said body after said capturing.” As a result, Logan does not expressly or inherently describe each and every element of claim 16, and Applicants believe claim 16 is in condition for allowance. Claims 17-21 and 23 depend from claim 16, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

With regard to dependent claim 23, Logan nowhere describes the claimed “side opening,” and the Office Action does not contend that Logan does so.

REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,

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